

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

WESLEY TURK,)	
)	
Petitioner,)	
)	
v.)	No. 4:11-CV-276-CEJ
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Wesley Turk motion for leave to proceed in forma pauperis and his application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Upon consideration of the financial information provided with the application, the Court will grant petitioner's motion to proceed in forma pauperis. See 28 U.S.C. § 1915(a).

Background

On January 31, 1995, petitioner pleaded guilty to carjacking and use of a firearm during a violent crime, in violation of 18 U.S.C. §§ 2119 and 924(c)(1), respectively. He was sentenced to a term of life imprisonment with respect to the carjacking and to sixty months' imprisonment with respect to the use of a firearm. Petitioner did not appeal his conviction, and he has not previously filed a motion for habeas corpus relief. In the instant action, petitioner seeks relief from his sentence on the grounds that his guilty plea was invalid and he received ineffective assistance of counsel.

Discussion

A challenge to a federal conviction or sentence is most appropriately brought as

a motion under 28 U.S.C. § 2255. See United States v. Hayman, 342 U.S. 205, 217 (1952). The United States Court of Appeals for the Eighth Circuit has held that a writ of habeas corpus may issue under § 2241 only if it appears that the remedy by means of filing a § 2255 motion is inadequate or ineffective. See United States v. Lurie, 207 F.3d 1075, 1077 (8th Cir. 2000).

Petitioner states that he was unable to file a § 2255 motion within the limitations period, because his requests for copies of transcripts were denied. Thus, he claims that his remedy under § 2255 is inadequate. The Court finds that petitioner's rationale is insufficient to establish the inadequacy or ineffectiveness of remedy by § 2255 motion. A § 2255 motion is not inadequate merely because "petitioner has allowed the one year statute of limitations and/or grace period to expire." Id. As such, the Court will dismiss the instant § 2241 petition.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that no order to show cause shall issue as to respondent.

A separate Order of Dismissal will accompany this Memorandum and Order.

Dated this 24th day of February, 2011.


UNITED STATES DISTRICT JUDGE